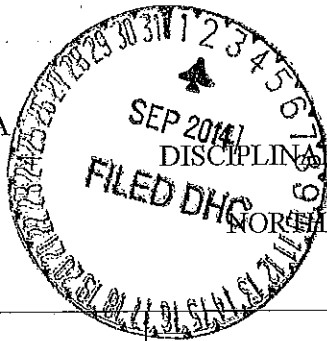


STATE OF NORTH CAROLINA
WAKE COUNTY



BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
14 DHC 29

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

CLARKE K. WITTSTRUCK, Attorney,

Defendant

COMPLAINT

Plaintiff, complaining of Defendant, alleges and says:

1. Plaintiff, the North Carolina State Bar ("State Bar"), is a body duly organized under the laws of North Carolina and is the proper party to bring this proceeding under the authority granted it in Chapter 84 of the General Statutes of North Carolina, and the Rules and Regulations of the North Carolina State Bar (Chapter 1 of Title 27 of the North Carolina Administrative Code).

2. Defendant, Clarke K. Wittstruck, ("Wittstruck" or "Defendant"), was admitted to the North Carolina State Bar on August 23, 1986, and is, and was at all times referred to herein, an attorney at law licensed to practice in North Carolina, subject to the laws of the State of North Carolina, the Rules and Regulations of the North Carolina State Bar and the Rules of Professional Conduct.

Upon information and belief:

3. During all or part of the relevant periods referred to herein, Wittstruck was engaged in the practice of law in the State of North Carolina operating out of Buncombe County, North Carolina.

FIRST CLAIM FOR RELIEF

4. In November 2011, W. E. Moore ("Moore") hired and paid Defendant \$1,020.00 to represent Moore in Moore's effort to obtain a divorce.

5. On or about December 22, 2011, Defendant notified Moore that service of the Complaint was complete and Moore's spouse had 30 days to answer.

6. In late March 2012, Defendant told Moore that Defendant would send to Moore a copy of the response to the divorce Complaint filed by Moore's spouse. Defendant did not promptly send the response filed by Moore's spouse to Moore.

7. When Defendant did not promptly send the response filed by Moore's spouse to Moore, Moore called and emailed Defendant requesting the documents and a status update on the case. Defendant did not return Moore's calls or emails. As of April 13, 2013, Defendant had not sent a copy of the response filed by Moore's spouse to Moore as Defendant had said he would do.

8. On June 19, 2012, Defendant told Moore that Defendant had to draft a qualified domestic relations order ("QDRO") which he would send to Moore to review the following Thursday. On July 18, 2012, Defendant sent the QDRO drafts and an alimony order to Moore which Moore approved that day and told Defendant to proceed.

9. On July 23, 2012, Defendant sent the drafts to opposing counsel and on August 13, 2013, in response to an email from Moore, Defendant told Moore that Defendant would contact opposing counsel that day and inquire about the status of the drafts.

10. On August 22, August 28, and September 6, 2012, Moore asked Defendant for status updates on his divorce case. On September 7, 2012, Defendant told Moore the matter should be complete by the end of the following week.

11. On September 21, September 28, and October 9, 2012, Moore sent Defendant emails asking Defendant for status updates on his case. Defendant did not respond to Moore's emails requesting information.

THEREFORE, Plaintiff alleges that Defendant's foregoing actions constitute grounds for discipline pursuant to N.C. Gen. Stat. § 84-28(b)(2) in that Defendant violated the Rules of Professional Conduct in effect at the time of the conduct as follows:

- a) By telling Moore he would send documents filed by the opposing party to Moore and then failing to do so, and by telling Moore he would have a draft of a QDRO to Moore the following week and then failing to do so, Defendant failed to act with reasonable diligence and promptness in representing Moore in violation of Rule 1.3; and
- b) By failing to return Moore's telephone calls and emails requesting status updates on his case, Defendant failed to keep Moore reasonably informed about the status of his case in violation of Rule 1.4(a)(3) and failed to promptly comply with reasonable requests for information in violation of Rule 1.4(a)(4).

SECOND CLAIM FOR RELIEF

12. Paragraphs 1-11 are re-alleged and incorporated as if fully set out herein.

13. In February 2013, J.N. Ray ("Ray") hired Defendant to represent her in a traffic infraction case and paid Defendant \$305.00 to cover court costs, any fine and Defendant's fee.

14. Defendant did not deposit the funds Ray delivered to him to pay the court costs and fine into a trust account.

15. Defendant disposed of Ray's case on March 4, 2013 but did not pay the fine and costs imposed in the case as he had agreed to do and did not notify Ray of the disposition of her case.

16. After March 4, 2013, Ray tried to contact Defendant for information about the case but Defendant would not return her emails or telephone calls.

17. Defendant's failure to pay the costs in Ray's case resulted in a failure to comply ("FTC") being entered in Ray's case.

18. On April 1, 2013, Ray filed a Petition for Resolution of Disputed Fee with the North Carolina State Bar's Fee Dispute Resolution Program ("FDRP") based on Defendant's handling of her traffic case.

19. On April 4, 2013, Defendant signed the certified mail green card acknowledging receipt of the fee dispute petition. Defendant did not respond to the FDRP notice within 15 days of receipt of the letter and did not request an extension of time to respond.

20. On April 5, 2013, Defendant paid the costs in Ray's case but did not notify Ray of the disposition of her case.

THEREFORE, Plaintiff alleges that Defendant's foregoing actions constitute grounds for discipline pursuant to N.C. Gen. Stat. § 84-28(b)(2) in that Defendant violated the Rules of Professional Conduct in effect at the time of the conduct as follows:

- a) By failing to notify Ray of the disposition of her case after the March 4, 2013 court date and by failing to return Ray's telephone calls and emails requesting status updates on her case, Defendant failed to keep Ray reasonably informed about the status of her case in violation of Rule 1.4(a)(3), and failed to promptly comply with reasonable requests for information in violation of Rule 1.4(a)(4);
- b) By failing to deposit the funds received from Ray for court costs and any fine into a trust account, Defendant failed to promptly deposit entrusted funds in a trust account in violation of Rule 1.15-2(b);
- c) By failing to pay the court costs in Ray's case until April 5, 2013 resulting in a FTC being entered in Ray's case, Defendant failed to act with reasonable diligence and promptness in representing Ray in violation of Rule 1.3; and

- d) By failing to respond to the notice of fee dispute within the time allowed by 27 N.C.A.C., Chapter 1, Subchapter D, Rule .0708(c), Defendant failed to participate in good faith in the fee dispute resolution process in violation of Rule 1.5(f)(2).

THIRD CLAIM FOR RELIEF

21. Paragraphs 1-20 are re-alleged and incorporated as if fully set out herein.
22. On or about September 14, 2012, T. Larson ("Larson"), a resident of Ohio, paid Defendant \$75.00 to represent her in a traffic case in Polk County, North Carolina. Larson's citation set her initial court date for September 19, 2012.
23. Defendant told Larson he would continue the September 19, 2012 court date and let Larson know when the continuance was obtained. On September 24, 2012, Larson emailed Defendant seeking information on whether the continuance was obtained. Defendant did not respond to Larson's September 24, 2012 email requesting information about her case.
24. Defendant did not get Larson's September 19, 2012 court date continued and on September 19, 2012, an order for arrest ("OFA") for Larson's failure to appear ("FTA") in court was issued.
25. On October 24, 2012, the North Carolina Department of Motor Vehicles sent Larson a letter notifying her that her driving privileges in North Carolina would be suspended on December 23, 2012 for FTA on the traffic ticket Defendant was hired to handle.
26. On November 7, 2012, the Ohio Department of Public Safety sent Larson a letter notifying her that her driving privileges in the State of Ohio would be suspended on December 4, 2012 for failing to comply with the Polk County traffic ticket Defendant was hired to handle.
27. On November 14, 2012, Defendant obtained an order striking Larson's FTA.
28. On November 14, 2012, Defendant entered a guilty plea on Larson's behalf in Polk County District Court.
29. Defendant refunded \$50.00 of his fee to Larson.

THEREFORE, Plaintiff alleges that Defendant's foregoing actions constitute grounds for discipline pursuant to N.C. Gen. Stat. § 84-28(b)(2) in that Defendant violated the Rules of Professional Conduct in effect at the time of the conduct as follows:

- a) By failing to respond to Larson's request for information about her request for a continuance of the September 19, 2012 court date, Defendant failed to keep Larson reasonably informed about the status of her case in violation of Rule 1.4(a)(3), and failed to promptly comply with reasonable requests for information in violation of Rule 1.4(a)(4); and
- b) By failing to get Larson's September 19, 2012 court date continued, failing to respond to Larson's requests for information about the September 19, 2012 continuance, and waiting until November 14, 2012 to obtain an order striking the called and failed entered in Larson's case, Defendant failed to act with reasonable diligence and promptness in representing Larson in violation of Rule 1.3.

FOURTH CLAIM FOR RELIEF

30. Paragraphs 1-29 are re-alleged and incorporated as if fully set out herein.

31. In August 2012, R. Grawe ("Grawe") hired Defendant to represent him in a Madison County traffic case and paid Defendant \$495.00 to cover court costs, any fine and Defendant's fee. Grawe's citation set his court appearance for August 23, 2012.

32. Defendant did not deposit the funds Grawe delivered to him to pay the court costs and fine into a trust account.

33. Defendant continued Grawe's traffic case to September 13, 2012 but did not dispose of Grawe's case on that date or obtain a further continuance of the case. Defendant did not notify Grawe that Defendant had failed to dispose of Grawe's case or get it continued from the September 13, 2012 term.

34. In May 2013, a FTA was entered in Grawe's traffic case. Defendant did not notify Grawe that a FTA was entered in Grawe's case.

35. On or about May 7, 2013, the North Carolina Division of Motor Vehicles ("DMV") sent Grawe a letter notifying him that his driving privilege was scheduled for suspension effective July 6, 2013 for failure to appear in his Madison County traffic case.

36. Following receipt of the DMV notice, Grawe called the Madison County District Attorney's Office, got the FTA set aside, and negotiated an improper equipment disposition in his case. Grawe paid the fine and court cost assessed in the case directly to the Clerk of Court.

37. On June 13, 2013, Grawe filed a Petition for Resolution of Disputed Fee with the North Carolina State Bar's Fee Dispute Resolution Program ("FDRP") based on Defendant's handling of his traffic case.

38. On June 13, 2013, notice of the fee dispute was mailed to Defendant, he signed the certified mail green card acknowledging receipt of the notice, and the card was returned to the FDRP.

39. Defendant did not respond in writing to the FDRP's notice or request an extension of time to respond.

THEREFORE, Plaintiff alleges that Defendant's foregoing actions constitute grounds for discipline pursuant to N.C. Gen. Stat. § 84-28(b)(2) in that Defendant violated the Rules of Professional Conduct in effect at the time of the conduct as follows:

- a) By failing to deposit the funds received from Grawe for court costs and fine into a trust account, Defendant failed to promptly deposit entrusted funds in a trust account in violation of Rule 1.15-2(b);
- b) By failing to dispose of Grawe's case at the September 13, 2013 term or obtain a continuance of the case, and neglecting the case thereafter, Defendant failed to act with reasonable diligence and promptness in representing Grawe in violation of Rule 1.3;
- c) By failing to notify Grawe that he had failed to dispose of the case or get it continued and failing to let Grawe know that a FTA was entered in the case, Defendant failed to keep Grawe reasonably informed about the status to his case in violation of Rule 1.4(a)(3); and
- c) By failing to respond to the FDRP's notice of fee dispute within the time allowed by 27 N.C.A.C., Chapter 1, Subchapter D, Rule .0708(c), Defendant failed to participate in good faith in the fee dispute resolution process in violation of Rule 1.5(f)(2).

FIFTH CLAIM FOR RELIEF

40. Paragraphs 1-39 are re-alleged and incorporated as if fully set out herein.

41. In February 2013, A. Fisher ("Fisher") hired Defendant to represent her in a domestic case and paid Defendant \$3,200.00.

42. After he was paid, Defendant set Fisher's file aside and did not complete the work on Fisher's case.

43. Due to Defendant's neglect of her case, on or about May 16, 2013, Fisher instructed Defendant by email not to proceed with her case and to refund the money she had paid Defendant. That same day, Defendant sent Fisher an email advising her that on the following Monday, he would refund the money Fisher paid him.

44. Defendant did not refund Fisher's money as he said he would and did not return Fisher's follow-up emails, calls or texts.

45. On June 14, 2013, Fisher received a partial refund of \$1,200.02 from Defendant, and on June 15, 2013, Fisher received a partial refund of \$400.00.

46. On or about June 17, 2013, Fisher filed a Petition for Resolution of Disputed Fee with the North Carolina State Bar's Fee Dispute Resolution Program ("FDRP").

47. On June 17, 2013, notice of the fee dispute was mailed to Defendant by certified mail and the green card acknowledging receipt of the notice was signed by Defendant and returned to the FDRP.

48. Defendant did not respond in writing to the FDRP's notice and did not request an extension of time to respond.

THEREFORE, Plaintiff alleges that Defendant's foregoing actions constitute grounds for discipline pursuant to N.C. Gen. Stat. § 84-28(b)(2) in that Defendant violated the Rules of Professional Conduct in effect at the time of the conduct as follows:

- a) By accepting a fee and then failing to perform the work he was paid to perform in Fisher's case, Defendant failed to act with reasonable diligence and promptness in representing Fisher in violation of Rule 1.3;
- b) By failing to promptly refund the legal fee to Fisher as he said he would do and failing to respond to Fisher's emails, calls and texts regarding his failure to refund Fisher's money, Defendant failed to keep Fisher reasonably informed about the status of her refund in violation of Rule 1.4(a)(3), and failed to promptly comply with reasonable requests for information in violation of Rule 1.4(a)(4); and
- c) By failing to respond to the FDRP's notice of fee dispute within the time allowed by 27 N.C.A.C., Chapter 1, Subchapter D, Rule .0708(c), Defendant failed to participate in good faith in the fee dispute resolution process in violation of Rule 1.5(f)(2).

SIXTH CLAIM FOR RELIEF

49. Paragraphs 1-48 are re-alleged and incorporated as if fully set out herein

50. In March 2013, B. Bell ("Bell") hired Defendant to represent him in two traffic cases, one in Henderson County and one in Polk County. Bell paid Defendant \$150.00 for Defendant's fee.

51. The Henderson County case was scheduled for May 22, 2013. Defendant did not appear in court for Bell on May 22, 2013.

52. When Bell realized Defendant had not attended the May 22, 2013 court date, Bell called and emailed Defendant about the case but did not get a response from Defendant.

53. Bell went to court in the Henderson County case on May 24, 2013, and appearing *pro se*, obtained a disposition of the case.

54. Defendant continued Bell's Polk County case to July 15, 2013, but did not attend court on Bell's behalf on July 15, 2013 or get the case continued. As a result, Bell was called and failed.

55. Defendant later got the court to strike the called and failed in the Polk County case.

56. On July 1, 2013, Bell filed a Petition for Resolution of Disputed Fee with the North Carolina State Bar's Fee Dispute Resolution Program ("FDRP") based on Defendant's handling of his traffic case.

57. Notice of the fee dispute was served on Defendant by certified mail on July 10, 2013.

58. Defendant did not timely respond to the FDRP's request for information related to Bell's FDRP petition and did not request an extension of time to respond.

59. On October 10, 2013, Defendant responded to a letter of notice ("LON") from the State Bar related to his conduct in Bell's Henderson County case. In his response to the State Bar, Defendant stated, in part, "On 5/24/13 I processed the case in Henderson and Mr. Bell paid the costs of court directly."

60. On May 15, 2014, the State Bar sent Defendant a letter asking him to explain the apparent inconsistency between his response and information in the court file related to the disposition of Bell's Henderson County case. Defendant did not respond to the State Bar's letter of May 15, 2014.

61. Defendant's statement to the State Bar noted in paragraph 59 was not true.

THEREFORE, Plaintiff alleges that Defendant's foregoing actions constitute grounds for discipline pursuant to N.C. Gen. Stat. § 84-28(b)(2) in that Defendant violated the Rules of Professional Conduct in effect at the time of the conduct as follows:

- a) By failing to attend court in Bell's Henderson County case on May 22, 2013, failing to obtain a continuance of the case, and neglecting the case thereafter, Defendant failed to act with reasonable diligence and promptness in representing Bell in violation of Rule 1.3;
- b) By failing to respond to Bell's telephone calls and emails after Bell realized Defendant failed to attend the May 22, 2013 court date in Bell's Henderson County case, Defendant failed to keep Bell reasonably informed about the status of his case in violation of Rule 1.4(a)(3), and failed to promptly comply with reasonable requests for information in violation of Rule 1.4(a)(4);
- c) By failing to respond to the FDRP's notice of fee dispute within the time allowed by 27 N.C.A.C., Chapter 1, Subchapter D, Rule .0708(c), Defendant failed to participate in good faith in the fee dispute resolution process in violation of Rule 1.5(f)(2);

- d) By failing either to attend court in Bell's Polk County case on July 15, 2013 or obtain a continuance of the case, Defendant failed to act with reasonable diligence and promptness in representing Bell in violation of Rule 1.3;
- e) By stating in his response to the State Bar's LON that he had processed Bell's Henderson County case, Defendant knowingly made a false statement of material fact in connection with a disciplinary matter in violation of Rule 8.1(b), and engaged in conduct involving dishonesty or misrepresentation in violation of Rule 8.4(c); and
- f) By failing to respond to the State Bar's letter of May 15, 2014 requesting an explanation of the discrepancy between Defendant's statement claiming he processed Bell's Henderson County case and information in the court file, Defendant knowingly failed to respond to a lawful demand for information from a disciplinary authority in connection with a disciplinary matter in violation of Rule 8.1(b).

SEVENTH CLAIM FOR RELIEF

62. Paragraphs 1-61 are re-alleged and incorporated as if fully set out herein

63. On or about December 5, 2012, J. Miller ("Miller") hired Defendant to represent her in a Madison County traffic case and paid Defendant \$75.00 as Defendant's fee.

64. Miller and Defendant agreed Defendant would get the case continued from its initial court date of December 10, 2012 to allow Miller and Defendant to further discuss Miller's options. Defendant did not appear on Miller's behalf in court on December 10, 2012 and failed to get Miller's case continued.

65. After her December 10, 2012 court date, Miller left voice messages with and sent emails to Defendant seeking information about her case but Defendant did not respond to Miller's requests for information about her case.

66. As a result of Defendant's neglect of Miller's case, a FTA was entered against Miller in the case.

67. On or about July 3, 2013, Miller, proceeding *pro se*, negotiated a disposition of her case with the district attorney.

68. On July 24, 2013, Miller filed a Petition for Resolution of Disputed Fee with the North Carolina State Bar's Fee Dispute Resolution Program ("FDRP").

69. On July 30, 2013, Defendant signed the certified mail green card acknowledging receipt of the FDRP notice.

70. Defendant did not timely respond to the FDRP's request for information related to Miller's fee dispute and did not request an extension of time to respond.

71. Defendant later refunded \$75.00 to Miller.

THEREFORE, Plaintiff alleges that Defendant's foregoing actions constitute grounds for discipline pursuant to N.C. Gen. Stat. § 84-28(b)(2) in that Defendant violated the Rules of Professional Conduct in effect at the time of the conduct as follows:

- a) By failing to obtain a continuance of Miller's traffic case and neglecting the case thereafter, Defendant failed to act with reasonable diligence and promptness in representing Miller in violation of Rule 1.3;
- b) By failing to respond to Miller's telephone calls and emails seeking information about the status of her case, Defendant failed to keep Miller reasonably informed about the status of her case in violation of Rule 1.4(a)(3), and failed to promptly comply with reasonable requests for information in violation of Rule 1.4(a)(4); and
- c) By failing to respond to the FDRP's notice of fee dispute within the time allowed by 27 N.C.A.C., Chapter 1, Subchapter D, Rule .0708(c), Defendant failed to participate in good faith in the fee dispute resolution process in violation of Rule 1.5(f)(2).

EIGHTH CLAIM FOR RELIEF

72. Paragraphs 1-71 are re-alleged and incorporated as if fully set out herein.

73. In April 2013, W. Denkins ("Denkins") hired Defendant to file for an uncontested divorce.

74. Defendant told Denkins it would take about 60 days to resolve the case.

75. In April 2013, Defendant prepared a Complaint for Denkins and mailed the Complaint to Denkins for Denkins' approval and signature.

76. On April 26, 2013, Denkins signed the Complaint that Defendant had sent to Denkins and, on or about that same date, Denkins returned the verified Complaint to Defendant along with a check for \$360.00. The \$360.00 was the agreed upon amount to cover the costs and Defendant's fee to file the divorce case.

77. The \$360.00 check Denkins delivered to Defendant cleared Denkins' bank account on or about May 1, 2013.

78. Between May 1, 2013 and July 23, 2013, Denkins called and emailed Defendant seeking information about the status of the case. Defendant did not return Denkins' calls or emails.

79. On July 25, 2013, Denkins filed a Petition for Resolution of Disputed Fee with the North Carolina State Bar's Fee Dispute Resolution Program ("FDRP").

80. On July 31, 2013, notice of the fee dispute was mailed to Defendant. The post office left Defendant two notices of the certified mail. Defendant did not claim the certified letter and it was returned to the State Bar.

81. On or about August 8, 2013, Defendant filed a divorce Complaint with the Clerk of Buncombe County in case, *Denkins v. Denkins*, 13Cvd 03379.

82. On August 29, 2013, notice of the fee dispute was faxed to Defendant and he acknowledged receipt of the fax.

83. Defendant did not respond to the FDRP's request for a written response to Denkins' FDRP petition and did not request additional time to provide a written response.

84. On October 21, 2013, Defendant was served with a LON by the State Bar in State Bar file 13G0940 making a formal inquiry into Defendant's conduct in representing Denkins in his divorce case.

85. Defendant did not respond to the State Bar's LON nor did he request an extension of time to submit a response within the time provided by 27 N.C.A.C., Chapter 1, Subchapter B, Rule .0112(c).

86. On December 6, 2013, Defendant sent a letter to the State Bar addressing his conduct in handling Denkins' divorce case.

87. In Defendant's December 6, 2013 letter, he made the following statement to the State Bar: "On August 8, 2013, Mr. Denkins returned the divorce complaint to me and paid me \$360.00 by personal check." Defendant's quoted statement is not true.

88. On May 19, 2014, the State Bar sent a letter to Defendant asking him to provide deposit information, including a copy of the deposit ticket, the bank statement showing the deposit, and a ledger for the \$360.00 check Denkins paid him for the divorce case.

89. On or about June 29, 2014, Defendant responded to the State Bar's letter referenced in paragraph 88 above with a letter which contained the following statement: "Mr. Denkins paid me with a personal check of \$360 on 8/8/13." Defendant's quoted statement is not true.

90. Defendant did not provide the State Bar copies of the documents requested in its letter of May 19, 2014 related to the deposit of Denkins' \$360.00 check.

91. Denkins' \$360.00 check included the filing fee for the divorce case which Denkins entrusted to Defendant for that purpose.

92. Defendant did not deposit Denkins' \$360.00 check into a trust account.

93. On or about October 22, 2013, Defendant refunded \$360.00 to Denkins, who hired another lawyer to complete his divorce case.

THEREFORE, Plaintiff alleges that Defendant's foregoing actions constitute grounds for discipline pursuant to N.C. Gen. Stat. § 84-28(b)(2), in that Defendant violated the Rules of Professional Conduct in effect at the time of the conduct, and pursuant to N.C. Gen. Stat. § 84-28(b)(3), as follows:

- a) By failing to prepare, file and serve the uncontested divorce pleadings in Denkins' case within a reasonable time after being paid on May 1, 2013, and as Defendant represented to Denkins he would do, Defendant failed to act with reasonable diligence and promptness in representing Denkins in violation of Rule 1.3;
- b) By failing to return Denkins' telephone calls and emails requesting information on the status of his case, Defendant failed to keep Denkins reasonably informed about the status of his case in violation of Rule 1.4(a)(3) and failed to promptly comply with reasonable requests for information in violation of Rule 1.4(a)(4);
- c) By failing to respond in writing to the FDRP's notice of fee dispute, Defendant failed to participate in good faith in the fee dispute resolution process in violation of Rule 1.5(f)(2);
- d) By failing to respond in writing to the LON served on Defendant on October 21, 2013 within the time allowed by 27 N.C.A.C., Chapter 1, Subchapter B, Rule .0112(c), Defendant violated Rule 8.1(b) and N.C. Gen. § 84-28(b)(3);
- e) By stating in his December 6, 2013 response to the LON that Denkins returned the divorce Complaint to Defendant and paid Defendant \$360.00 by personal check on August 8, 2013, Defendant made a knowing misrepresentation of the facts and circumstances surrounding an allegation of misconduct in violation of N.C. Gen. § 84-28(b)(3), knowingly made a false statement of material fact in connection with a disciplinary matter in violation of Rule 8.1(a), and engaged in conduct involving dishonesty or misrepresentation in violation of Rule 8.4(c); and
- f) By failing to deposit Denkins' \$360 check which included entrusted funds belonging to Denkins into a trust account, Defendant failed to promptly deposit entrusted funds into a trust account in violation of Rule 1.15-2(b).

NINTH CLAIM FOR RELIEF

94. Paragraphs 1-93 are re-alleged and incorporated as if fully set out herein.

95. On or about January 28, 2013, A. Ladhani ("Ladhani") hired Defendant to represent Ladhani in a traffic ticket and a misdemeanor charge. Ladhani paid Defendant a fee of \$275.00.

96. Defendant failed to appear in court on Ladhani's behalf in the misdemeanor case on February 8, 2013 and did not arrange for the case to be continued.

97. On March 8, 2013, Ladhani was arrest for failure to appear.

98. After the February 8, 2013 court date but prior to Ladhani's arrest for failure to appear, Ladhani sent Defendant emails seeking information about the status of his case but Defendant did not respond to Ladhani's requests for information.

99. In one of Ladhani's emails to Defendant referenced in paragraph 98 above, Ladhani specifically asked Defendant: "Could I possibly get an update. I just don't want to find out there is a warrant for me on failure to appear."

100. On May 8, 2014, Defendant was served with a LON by the State Bar in State Bar file 13G1124 making a formal inquiry into Defendant's conduct in representing Ladhani in his traffic and misdemeanor cases.

101. Defendant did not respond to the State Bar's Letter of Notice nor did he request an extension of time to submit a response within the time provided by 27 N.C.A.C., Chapter 1, Subchapter B, Rule .0112(c).

THEREFORE, Plaintiff alleges that Defendant's foregoing actions constitute grounds for discipline pursuant to N.C. Gen. Stat. § 84-28(b)(2), in that Defendant violated the Rules of Professional Conduct in effect at the time of the conduct, and pursuant to N.C. Gen. Stat. § 84-28(b)(3) as follows:

- a) By failing to appear in court on Ladhani's behalf or otherwise get the misdemeanor case continued resulting in Ladhani's arrest for failure to appear, Defendant failed to act with reasonable diligence and promptness in representing Ladhani in violation of Rule 1.3;
- b) By failing to respond to Ladhani's emails requesting information about the status of his case, Defendant failed to keep Ladhani reasonably informed about the status of his case in violation of Rule 1.4(a)(3) and failed to promptly comply with reasonable requests for information in violation of Rule 1.4(a)(4); and
- c) By failing to respond in writing to the LON served on Defendant on May 8, 2014 within the time allowed by 27 N.C.A.C., Chapter 1, Subchapter B, Rule .0112(c), Defendant violated Rule 8.1(b) and N.C. Gen. § 84-28(b)(3).

TENTH CLAIM FOR RELIEF

102. Paragraphs 1-101 are re-alleged and incorporated as if fully set out herein.

103. In early 2013, M. Gardiner ("Gardiner") hired Defendant to represent her in two traffic cases, a 2012 speeding ticket, and a 2013 ticket charging Gardiner with speeding and a seat restraint violation. Gardiner paid Defendant a fee of \$75 in each case.

104. Defendant told Gardiner he would get the 2012 case continued but he did not follow-up and let her know her new court date.

105. Defendant failed to get Gardiner's 2012 traffic case continued and a FTA was entered in her case on June 12, 2013.

106. As of mid-summer 2013, Gardiner had not heard from Defendant concerning the court date for her 2012 traffic case and tried to contact Defendant on several occasions.

107. Defendant did not respond to Gardiner's attempts to contact him so she hired another attorney to handle the 2012 traffic case.

108. On May 8, 2014, Defendant was served with a LON by the State Bar in State Bar file 13G0966 making a formal inquiry into Defendant's conduct in representing Gardiner in her 2012 traffic case.

109. Defendant did not respond to the State Bar's LON nor did he request an extension of time to submit a response within the time provided by 27 N.C.A.C., Chapter 1, Subchapter B, Rule .0112(c).

THEREFORE, Plaintiff alleges that Defendant's foregoing actions constitute grounds for discipline pursuant to N.C. Gen. Stat. § 84-28(b)(2), in that Defendant violated the Rules of Professional Conduct in effect at the time of the conduct, and pursuant to N.C. Gen. Stat. § 84-28(b)(3) as follows:

- a) By failing to appear in court on Gardiner's behalf or otherwise get the 2012 traffic case continued resulting in a FTA being entered against Gardiner, Defendant failed to act with reasonable diligence and promptness in representing Gardiner in violation of Rule 1.3;
- b) By failing to respond to Gardiner's communications requesting information about the status of her case, Defendant failed to keep Gardiner reasonably informed about the status of her case in violation of Rule 1.4(a)(3) and failed to promptly comply with reasonable requests for information in violation of Rule 1.4(a)(4); and
- c) By failing to respond in writing to the LON served on Defendant on May 8, 2014 within the time allowed by 27 N.C.A.C., Chapter 1, Subchapter B, Rule .0112(c), Defendant violated Rule 8.1(b) and N.C. Gen. § 84-28(b)(3).

ELEVENTH CLAIM FOR RELIEF

110. Paragraphs 1-109 are re-alleged and incorporated as if fully set out herein.

111. On or about April 26, 2013, S. Pendergast ("Pendergast") hired Defendant to represent her in a 2012 traffic case ("traffic case") and paid Defendant \$350.00 to cover Defendant's fee, the court costs and any fine.

112. Defendant continued Pendergast's case but failed to advise her of the new court date.

113. On or about May 14, 2013, Pendergast spoke with Defendant by telephone and was told by Defendant that he had presented her case, paid the fine and her case was closed. Defendant's statement to Pendergast that the case had been presented and was closed was not true.

114. On or about July 17, 2013, Pendergast's case was on the calendar in Henderson County District Court but Defendant failed to appear in court for Pendergast's traffic case and did not arrange for the case to be continued which resulted in a FTA being entered against Pendergast.

115. On or about August 14, 2013, the North Carolina Division of Motor Vehicles ("DMV") sent Pendergast a letter notifying her that her driving privilege was scheduled for indefinite suspension effective October 13, 2013 for failure to appear in her Henderson County traffic case.

116. On or about September 16, 2013, Defendant obtained a consent order setting aside the failure to appear and re-calendaring Pendergast's traffic case for November 13, 2013.

117. On or about November 13, 2013, judgment was entered in Pendergast's traffic case imposing costs and fine totaling \$238.00. Although Defendant had been entrusted with funds to pay the costs and fine by Pendergast, Defendant failed to pay the \$238.00 imposed as costs and fine as he had agreed to do. Defendant did not notify Pendergast of the November 13, 2013 disposition of her case.

118. On or about December 6, 2013, a failure to comply ("FTC") with the judgment was entered in Pendergast's traffic case.

119. On or about December 9, 2013, DMV sent Pendergast a letter notifying her that her driving privilege was scheduled for indefinite suspension effective February 7, 2014 for failing to pay the fine in her Henderson County traffic case.

120. On December 12 and 23, 2013, Pendergast paid the Henderson County Clerk \$238.00 and \$50.00, respectively, for the costs and fine, and a late fee.

121. The \$350.00 that Pendergast paid Defendant included entrusted funds to pay the costs and any fine. Defendant did not deposit the funds received from Pendergast into a trust account.

122. On May 19, 2014, Defendant was served with a LON by the State Bar in State Bar file 14G0443 making a formal inquiry into Defendant's conduct in representing Pendergast in her Henderson County traffic case.

123. Defendant did not respond to the State Bar's LON nor did he request an extension of time to submit a response within the time provided by 27 N.C.A.C., Chapter 1, Subchapter B, Rule .0112(c).

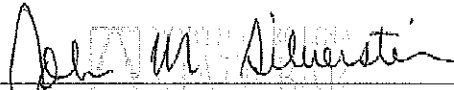
THEREFORE, Plaintiff alleges that Defendant's foregoing actions constitute grounds for discipline pursuant to N.C. Gen. Stat. § 84-28(b)(2), in that Defendant violated the Rules of Professional Conduct in effect at the time of the conduct, and pursuant to N.C. Gen. Stat. § 84-28(b)(3), as follows:

- a) By failing to obtain a continuance of the July 2013 court date of Pendergast's traffic case and failing to pay the costs and fine as he had agreed to do when judgment was entered in the case on November 13, 2013, Defendant failed to act with reasonable diligence and promptness in representing Pendergast in violation of Rule 1.3;
- b) By failing to notify Pendergast of the July 2013 court date in her traffic case, and failing to notify her of the result of the November 13, 2013 disposition, Defendant failed to keep Pendergast reasonably informed about the status of her traffic case in violation of Rule 1.4(a)(3);
- c) By failing to respond in writing to the LON served on Defendant on May 19, 2014 within the time allowed by 27 N.C.A.C., Chapter 1, Subchapter B, Rule .0112(c), Defendant violated Rule 8.1(b) and N.C. Gen. § 84-28(b)(3);
- d) By stating to Pendergast during a May 14, 2013 telephone conversation that he had presented her case, paid the fine and her case was closed, Defendant engaged in conduct involving dishonesty or misrepresentation in violation of Rule 8.4(c); and
- e) By failing to deposit the \$350.00 that Pendergast delivered to Defendant, which included entrusted funds, into a trust account, Defendant failed to deposit entrusted funds into a trust account in violation of Rule 1.15-2(b).

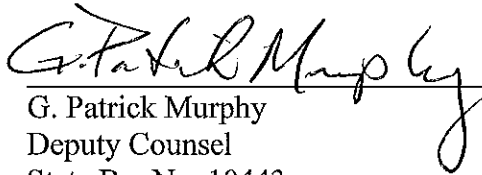
WHEREFORE, Plaintiff prays that:

- 1) Disciplinary action be taken against Defendant in accordance with N.C. Gen. Stat. § 84-28(a) and § .0114 of the Discipline and Disability Rules of the North Carolina State Bar (27 N.C.A.C. 1B § .0114), as the evidence on hearing may warrant;
- 2) Defendant be taxed with the administrative fees and costs permitted by law in connection with this proceeding; and
- 3) For such other and further relief as is appropriate.

The 2nd day of September, 2014.



John M. Silverstein, Chair
Grievance Committee



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